

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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ORLANDO OLAYA DIAZ,

Docket No. 1:25-cv-01450

Plaintiff

**ANSWER**

VS

KER GEOTECH INC, GABRIEL CIRCIU, AND  
MIKE STOICA,

Defendants

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Defendants, Ker Geotech Inc., Gabriel Circiu & Mike Stoica, through counsel, The Law Office of Avram E. Frisch LLC, answering the complaint say:

**Nature of the Action**

1. Defendants admit that Olaya was an employee of Ker Geotech.
2. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
3. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
4. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph.
5. Defendants deny the allegations of this Paragraph.
6. Defendants deny the allegations of this Paragraph.
7. Defendants deny the allegations of this Paragraph.

8. Defendants deny the allegations of this Paragraph.
9. Defendants deny the allegations of this Paragraph.
10. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
11. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

#### **JURISDICTION AND VENUE**

12. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
13. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

#### **THE PARTIES**

14. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph.
15. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
16. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
17. Defendants admit the allegations of this Paragraph.
18. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

19. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

**FACTUAL BACKGROUND**

20. Defendants admit the allegations of this Paragraph.

21. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

22. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

23. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

24. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

25. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

26. Defendants deny the allegations of this Paragraph and all subparagraphs.

27. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

28. Defendants lack knowledge and information sufficient to form a belief as to the allegations of this Paragraph.

29. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

30. Defendants admit that Olaya was an employee of Ker Geotech.

31. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
32. Defendants admit he was an employee for several years, but do not recall the exact time frame at this time and leave the Plaintiff to his proofs.
33. Ker Geotech employed Plaintiff.
34. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
35. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
36. Defendants deny the allegations of this Paragraph.
37. Defendants deny the allegations of this Paragraph.
38. Defendants deny the allegations of this Paragraph.
39. Defendants deny the allegations of this Paragraph.
40. Defendants deny the allegations of this Paragraph.
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- 50. Defendants deny the allegations of this Paragraph.
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- 53. Defendants deny the allegations of this Paragraph.
- 54. Defendants deny the allegations of this Paragraph.
- 55. Defendants deny the allegations of this Paragraph.
- 56. Defendants deny the allegations of this Paragraph.
- 57. Defendants deny the allegations of this Paragraph.
- 58. Defendants deny the allegations of this Paragraph.
- 59. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
- 60. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
- 61. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

### **COUNT I**

- 62. Defendants repeat each and every response to the preceding Paragraphs as if fully set forth herein.
- 63. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.
- 64. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

65. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

66. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

67. Defendants deny the allegations of this Paragraph.

68. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

69. Defendants deny the allegations of this Paragraph.

## **COUNT II**

70. Defendants repeat each and every response to the preceding Paragraphs as if fully set forth herein.

71. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

72. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

73. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

74. Defendants deny the allegations of this Paragraph.

75. Defendants deny the allegations of this Paragraph.

76. Defendants deny the allegations of this Paragraph.

## **COUNT III**

77. Defendants repeat each and every response to the preceding Paragraphs as if fully set forth herein.

78. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

79. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

80. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

81. Defendants deny the allegations of this Paragraph.

#### **COUNT IV**

82. Defendants repeat each and every response to the preceding Paragraphs as if fully set forth herein.

83. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

84. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

85. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

86. Defendants deny the allegations of this Paragraph.

#### **COUNT V**

87. Defendants repeat each and every response to the preceding Paragraphs as if fully set forth herein.

88. Defendants deny the allegations of this Paragraph.

89. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

**COUNT VI**

90. Defendants repeat each and every response to the preceding Paragraphs as if fully set forth herein.

91. Defendants deny the allegations of this Paragraph.

92. Defendants deny the allegations of this Paragraph.

**COUNT VII**

93. Defendants repeat each and every response to the preceding Paragraphs as if fully set forth herein.

94. This Paragraph contains legal conclusions to which no response is required, and to the extent a response is required, the allegations are denied.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Plaintiff's claims fail to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Plaintiff's claim is barred because of the Plaintiff's failure to add indispensable parties.

**THIRD AFFIRMATIVE DEFENSE**

The Plaintiff's claims are barred because of the doctrines of unclean hands, laches, waiver, and avoidable consequences.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate its damages.

**FIFTH AFFIRMATIVE DEFENSE**



Plaintiff is not an appropriate representative of the alleged collective action class, including the fact that other potential class members may have claims that are not appropriately venued in this district.

**SIXTH AFFIRMATIVE DEFENSE**

The Plaintiff's class action allegations fail because the requirements of Rule 23 of the Federal Rules of Civil Procedure have not been met, including but not limited to, numerosity, commonality, typicality, and adequacy of representation.

**SEVENTH AFFIRMATIVE DEFENSE**

The Plaintiff's class action claims are barred because the class is not ascertainable, making it impossible to identify and notify all potential class members effectively.

**EIGHTH AFFIRMATIVE DEFENSE**

The Plaintiff's claims are barred to the extent they seek relief that is inappropriate for class action treatment, such as individual damages that vary significantly among class members.

**NINTH AFFIRMATIVE DEFENSE**

The Plaintiff's class action allegations are barred because they fail to demonstrate that common issues will predominate over individual ones, resulting in an unmanageable trial.

**TENTH AFFIRMATIVE DEFENSE**

The Plaintiff's class action claims are barred due to the Plaintiff's failure to propose a viable method for calculating damages on a class-wide basis.

**THE LAW OFFICE OF AVRAM E.**

**FRISCH LLC**

/s/ Avram E. Frisch  
Avram E. Frisch, Esq.

Hackensack, New Jersey  
Dated: April 28, 2025

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*Attorney for Defendants*

